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**Testimony of Attorney Julia M. Brown  
on behalf of  
Elder Law Section  
Connecticut Bar Association**

**In Opposition to sections of SB843  
An Act Implementing the Governor's Budget Recommendations  
Concerning Social Services**

**Home and Community Based Programs and Services  
Connecticut Home Care Program for Elders  
Waivers  
Money Follows the Person**

**Human Services Committee  
March 3, 2009**

Thank you for the opportunity to provide written testimony on a matter of great importance to the Elder Law Section of the Connecticut Bar Association. There are approximately 500 members in our section and because this matter touches so many of our clients, I am submitting written testimony to highlight its significance. My testimony focuses on our support for home and community based programs and services and efforts to support a rebalancing through the Money Follows the Person Program.

I am an attorney whose practice focuses on the elderly, primarily persons 65 and older, their family members and others with disabilities. I have practiced for over twenty years in this area following my client's preferences for where they want to receive care and services, working hard with them to keep them at home while utilizing the array of services and support available to them. When they have required hospitalization or nursing home care, working to return them to their home at the earliest date possible or helping them find the best care available in our nursing, assisted living and other medical facilities.

My clients all share the desire to make decisions for themselves. They want to express their likes and dislikes and want them considered. They want their family and friends to be involved in helping them remain independent and in receiving the highest quality of care, support and services available and, when possible, they want to pay their own way.

With the exception of the Money Follows the Person program, most of the following programs discussed try to preempt the need for full 24 hour care in a facility by getting care and services in place when it is needed, not having people wait until it is too late, and they require more costly full time 24 hour care.

While we acknowledge there are conditions and circumstances where 24 hour in-patient care may be the first and the only choice, we also have to acknowledge that as a state we have taken the easier but more costly way of in-patient care as the first and easiest choice rather than fully committing to our home and community based services and waivers. Unfortunately, based on some of the services noted below we seem to be returning in that way again this session.

### **Home and Community Based Programs and Services**

The Elder Law Section supports legislation that would increase the availability of home and community based services for the elderly and for individuals under 65 whose care is supported thru the many Medicaid waivers in Connecticut. In particular, we ask to eliminate the proposed reductions and caps on spending for 2010 and 2011 to the proposed 2009 limits for the state-funded portion of the program.<sup>1</sup> Funding for the home care services of the home care program was capped in the 1990's and as a result many people did not receive care, their names were waitlisted for a number of years. Some of my clients, as well as many others, were eliminated from the wait list, not by having services provided to them, but by having to be placed into a nursing facility prematurely because they could not receive the lesser amount of care they needed at home that the funded home care program would have provided. Meanwhile, other people just kept under the radar and somehow "lived" without the care and support.

It takes a number of well-coordinated pieces to keep someone at home in the community. When one of those pieces fails and cannot or is not replaced, that person at home will no longer be able

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<sup>1</sup> **Governor's Bill 843, An Act Implementing the Governor's Budget Recommendations Concerning Social Services.** Sec. 54. Subdivision (1) of subsection (l) of section 17b-342 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*): (i) (1) On and after July 1, 1992, the Commissioner of Social Services shall, within available appropriations, administer a state-funded portion of the program for persons (A) who are sixty-five years of age and older; (B) who are inappropriately institutionalized or at risk of inappropriate institutionalization; (C) whose income is less than or equal to the amount allowed under subdivision (3) of subsection (a) of this section; and (D) whose assets, if single, do not exceed the minimum community spouse protected amount pursuant to Section 4022.05 of the department's uniform policy manual or, if married, the couple's assets do not exceed one hundred fifty per cent of said community spouse protected amount and on and after April 1, 2007, whose assets, if single, do not exceed one hundred fifty per cent of the minimum community spouse protected amount pursuant to Section 4022.05 of the department's uniform policy manual or, if married, the couple's assets do not exceed two hundred per cent of said community spouse protected amount. ***For the fiscal years ending June 30, 2010, and June 30, 2011, the caseload for the state-funded portion of the program shall not exceed the caseload level on June 30, 2009.***

(b) The plan developed pursuant to subsection (a) of this section shall detail the structure of the demonstration project, persons served, services to be provided and how they will be provided. The plan shall include a timetable for implementation of the demonstration project on or after July 1, [2009] **2011**. The plan shall ensure that the demonstration project includes, but is not limited to, the provision of the following services through a Medicaid state plan amendment, a new Medicaid waiver or modification of an existing home and community-based Medicaid waiver: Personal care assistance services, twenty-four-hour care, occupational therapy, homemaker services, companion services, meals on wheels, adult day care, transportation, mental health counseling, care management, elderly foster care, minor home modifications, assistive technology and assisted living services. The plan shall ensure that a person participating in the demonstration project receives the level of care and services appropriate to maintain such person in such person's home or community.

to remain there. Their independence is lost, their family and their community lose something, and the cost to the state instantly and dramatically increases. The Connecticut Home Care Program for Elders is one of those critical pieces that we cannot afford to lose or diminish. We ask you not to limit funding for this program and avoid taking a step backward in the quality of life of our elders; this will not reduce the ultimate cost to our state.

### **Waivers**

**Medicaid waiver programs** for persons with disabilities under the age of 65 have ongoing waitlists. The Acquired Brain Injury (ABI) waiver is currently on a waitlist and the Personal Care Assistant (PCA) waiver is on a waitlist and has been for a couple years. This means that these individuals either go without services or they must seek costly institutional care. Although the Department of Social Services has requested increases for these programs, no money has been allocated to increase the numbers of residents who would be served by these programs in the community; once again a great loss to the individual, their family and the community.

### **Money Follows the Person**

With respect to efforts to “rebalance” the long-term care system, the Governor’s Bill SB843 proposes to significantly limit the number of chronic care transitions under the recently implemented Money Follows the Person. <sup>2</sup>

The bill proposes as follows:

- To limit Money Follows the Person transitions of the chronic care waiver population to no more than 2% of the targeted 700 transitions
- To defer until July 1, 2011 the proposed timetable for implementation of a demonstration project (known as “MFP 2”) to provide the same service array as is being offered under MFP to individuals age 18 and older who are a) institutionalized or at risk of institutionalization; and b) meet CHCPE eligibility criteria <sup>3</sup>

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<sup>2</sup> Governor’s Bill 843, An Act Implementing the Governor’s Budget Recommendations Concerning Social Services  
DSS planned to transition one individual in FY2009, 14 individuals in FY2010 and 24 individuals in FY2011 at an average annual cost of \$148,260 per year. DSS is projected to spend \$2.7 million in year one transition costs for 24 clients in FY2011. Although this represents just under 12% of the approximately 200 transitions anticipated in FY2011 it accounts for over 26% of the costs. To address the extremely costly nature of these clients, DSS states that the operational protocol will be revised to limit the number of transitions under the chronic care waiver to no more than 2% of the 700 clients expected to be transitioned under the demonstration period. By the end of the next biennium, after the bulk of the transitions have occurred under the demonstration period, DSS will reassess this policy to determine where the state’s limited resources should best be targeted.

<sup>3</sup> Governor’s Bill 843, Section 55

- To defer until January 1, 2012 submission by DSS to the legislature of a plan to implement the above demonstration<sup>4</sup>
- to defer until July 1, 2011 establishment of the Long-Term Care Reinvestment Account that was authorized in 2008<sup>5</sup>
- To defer until January 1, 2012 submission by DSS to the legislature of a report on use of the LTC Reinvestment Account funds<sup>6</sup>

I thank you for the opportunity to provide written testimony on a matter of great importance to the Elder Law Section of the Connecticut Bar Association. Home and community based programs and services and “rebalancing” through the Money Follows the Person Program are critical not only to our senior members but to those persons with disabilities and to their families and our communities.

The programs we support try to preempt the need for full 24 hour care in a facility and when they cannot eliminate that need to delay that need until it is a necessity not a convenience or a failure of our home based and community supports. Please ensure that we do not lose ground at this time and that we continue to see the costs savings and value of the programs we already have in place.

Thank you.

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<sup>4</sup> Governor’s Bill 843, Section 56

<sup>5</sup> Governor’s Bill 843, Section 57

<sup>6</sup> Governor’s Bill 843, Section 58